

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of the amendment of) NOTICE OF PUBLIC HEARING ON
ARM 42.22.101 and 42.22.110) PROPOSED AMENDMENT
implementing a Montana Supreme)
Court decision pertaining to centrally)
assessed property)

TO: All Concerned Persons

1. On July 8, 2014, at 1:30 p.m., the Department of Revenue will hold a public hearing in the Third Floor Reception Area Conference Room of the Sam W. Mitchell Building, located at 125 North Roberts, Helena, Montana, to consider the proposed amendment of the above-stated rules. The conference room is most readily accessed by entering through the east doors of the building.

2. The Department of Revenue will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, please advise the department of the nature of the accommodation needed, no later than 5 p.m. on June 27, 2014. Please contact Laurie Logan, Department of Revenue, Director's Office, P.O. Box 7701, Helena, Montana 59604-7701; telephone (406) 444-7905; fax (406) 444-3696; or e-mail lalogan@mt.gov.

3. The rules as proposed to be amended provide as follows, new matter underlined, deleted matter interlined:

42.22.101 DEFINITIONS The following definitions apply to this chapter:

(1) through (4) remain the same.

(5) remains the same, but is renumbered (6).

~~(6)(5)~~ "Book depreciation" shall be the depreciation reported to the regulatory agency or acquired from independently audited financial statements.

(7) through (9) remain the same.

~~(10) "Goodwill" means booked or accounting goodwill. The booked goodwill must be present on the subject properties' financial statements, and must have been created through the purchase price accounting process as defined by GAAP or other accounting authority.~~

(11) remains the same, but is renumbered (10).

~~(12) "Intangible personal property" has the following attributes:~~

~~(a) Intangible personal property must be separable from the other assets in the unit and capable of being held under separate title or ownership.~~

~~(b) Intangible personal property must be able to be bought and sold, separate from the unit of operating assets, without causing harm, destroying, or otherwise impairing the value of the unit of assets being valued through the appraisal process.~~

~~(c) Intangible personal property must have value as a result of its ability to create earnings that exceeds their contributory value to the unit; or, it must be capable of earning an income as a standalone entity or apart from the other assets of the unit.~~

~~(d) Intangible personal property is not the same as intangible value. Intangible value is the value of an entity as a going concern – its ability to make excess revenues over the normal rate of return. Intangible value is part of the overall value of assets. Intangible value is not exempt from property taxation in Montana.~~

(13) remains the same, but is renumbered (11).

~~(14)~~(12) "Montana miles per day" equals the following: for tax

~~(a) Tax year 2003:~~

~~(i) for flat, box, gondola, and coal gondola railcars, when reported by specific railcar type, 475 miles; and~~

~~(ii) for all other railcars, 265 miles.~~

~~(b) Tax year 2004 and subsequent tax years:~~

~~(i)~~(a) for flat, box, gondola, and coal gondola railcars, when reported by specific railcar type, 450 miles;

~~(ii)~~(b) for all other railcars, 250 miles; or

~~(iii)~~(c) the number established by means of a speed study as described in ~~(27)~~(25).

(15) through (35) remain the same, but are renumbered (13) through (33).

AUTH: 15-23-108, 15-53-155, ~~45-72-147~~, MCA

IMP: 15-6-156, 15-23-101, ~~45-23-104~~, 15-23-211, 15-23-213, ~~45-53-145~~, ~~15-53-147~~, 15-72-104, MCA

REASONABLE NECESSITY: The department proposes amending ARM 42.22.101 to strike the terms "goodwill" and "intangible personal property," pursuant to Montana Supreme Court decision (2013 MT 273), holding that the definitions exceeded the scope of the implementing statute.

The department also proposes expanding the definition of "book depreciation," to include those derived from independently audited financial statements; reversing the order of (5) and (6) to correct an alphabetical error; removing outdated language from the definition of "Montana miles per day"; and striking inapplicable statutes from the authorization and implementing sections.

42.22.110 DEDUCTIONS FOR INTANGIBLE PERSONAL PROPERTY

(1) Cost, income, and market indicators ~~of the unit value of centrally assessed properties~~ can generally be expected to include ~~the value of real property, the value of personal property, and in some cases the value of specific intangible personal property.~~ To the extent that each unit valuation indicator includes the value of intangible personal property it shall not be relied upon unless such value of the intangible personal property is excluded or removed.

(2) and (3) remain the same.

~~(4) In order for intangible personal property to be considered for a deduction higher than the default percentage prescribed in (2), the property must have the characteristics of intangible personal property as defined above.~~

(5) remains the same, but is renumbered (4).

AUTH: 15-23-108, MCA

IMP: 15-6-218, ~~15-23-202~~ 15-23-205, 15-23-303, MCA

REASONABLE NECESSITY: The department proposes amending ARM 42.22.110 pursuant to Montana Supreme Court decision (2013 MT 273). That decision affirmed the Montana District Court's judgment invalidating the amendatory language added to (1), and all of (4), in 2010. The department further proposes updating the implementing section of the rule to reflect a recodification change.

4. Concerned persons may submit their data, views, or arguments, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted to: Laurie Logan, Department of Revenue, Director's Office, P.O. Box 7701, Helena, Montana 59604-7701; telephone (406) 444-7905; fax (406) 444-3696; or e-mail lalogan@mt.gov and must be received no later than July 15, 2014.

5. Laurie Logan, Department of Revenue, Director's Office, has been designated to preside over and conduct this hearing.

6. The Department of Revenue maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request, which includes the name and e-mail or mailing address of the person to receive notices and specifies that the person wishes to receive notice regarding particular subject matter or matters. Notices will be sent by e-mail unless a mailing preference is noted in the request. A written request may be mailed or delivered to the person in 4 above or faxed to the office at (406) 444-3696, or may be made by completing a request form at any rules hearing held by the Department of Revenue.

7. An electronic copy of this notice is available on the department's web site at revenue.mt.gov. Select the "Resources" tab at the top of the homepage and then locate the "Proposal Notices - Hearing Information" section below. The department strives to make the electronic copy of this notice conform to the official version of the notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the notice and the electronic version of the notice, only the official printed text will be considered. While the department also strives to keep its web site accessible at all times, in some instances it may be temporarily unavailable due to system maintenance or technical problems.

8. The bill sponsor contact requirements of 2-4-302, MCA, do not apply.

9. With regard to the requirements of 2-4-111, MCA, the department has determined that the amendment of the above-referenced rules will not significantly and directly impact small businesses.

/s/ Laurie Logan
LAURIE LOGAN
Rule Reviewer

/s/ Mike Kadas
MIKE KADAS
Director of Revenue

Certified to the Secretary of State June 2, 2014